

Senate Amendment 5118

PAG LIN

1 1 Amend House File 2351, as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. Page 2, lines 4 and 5, by striking the words
1 4 <utilities or persons> and inserting the following:
1 5 <utilities, ~~or persons,~~ companies, or corporations>.
1 6 #2. Page 2, line 29, by inserting after the word
1 7 <property> the following: <for redevelopment purposes
1 8 or to eliminate slum or blighted conditions>.
1 9 #3. Page 2, line 35, by striking the words <city
1 10 or county> and inserting the following:
1 11 <municipality>.
1 12 #4. Page 3, by striking lines 1 through 3 and
1 13 inserting the following: <public input, if seventy=
1 14 five percent or more of the area included in the plan
1 15 consists of property in a slum or blighted>.
1 16 #5. Page 3, line 6, by inserting after the word
1 17 <municipality.> the following: <The project or
1 18 acquisition plan area shall only include the adjacent
1 19 and contiguous parcels necessary for the completion of
1 20 a specific project that consists of the construction
1 21 of a new building, repair and rehabilitation of
1 22 buildings, and associated uses for a specific business
1 23 or housing project. Before a municipality exercises
1 24 its eminent domain authority to acquire properties in
1 25 a project or acquisition plan area that are not in a
1 26 slum or blighted condition, the municipality shall be
1 27 required to adopt a resolution by a two-thirds
1 28 majority to authorize the acquisition of such property
1 29 by eminent domain. The resolution shall make a
1 30 finding that includes at a minimum all of the
1 31 following:
1 32 (a) The taking of such property is necessary to
1 33 achieve the project or acquisition plan objectives.
1 34 (b) The taking of property for the project or
1 35 acquisition plan will eliminate or rehabilitate the
1 36 slum and blighted conditions in the remainder of the
1 37 area.
1 38 (c) The proposed project or acquisition plan will
1 39 confer significant economic benefits upon the
1 40 municipality.>
1 41 #6. Page 3, by striking lines 7 through 10.
1 42 #7. Page 3, by striking lines 11 through 14 and
1 43 inserting the following:
1 44 <For purposes of this subparagraph (5):
1 45 (a) "Blighted condition" means the presence of a
1 46 substantial number of slum or deteriorated structures;
1 47 insanitary or unsafe>.
1 48 #8. Page 3, by striking line 24 and inserting the
1 49 following:
1 50 <(b) "Slum condition".>
2 1 #9. Page 3, by striking line 32 and inserting the
2 2 following: <sanitation; by reason>.
2 3 #10. Page 4, by striking line 2 and inserting the
2 4 following:
2 5 <(c) In no case shall>.
2 6 #11. Page 4, by inserting after line 4 the
2 7 following:
2 8 <(d) "Project or acquisition plan" means the
2 9 planned activities of a municipality to eliminate or
2 10 rehabilitate slum or blighted conditions and redevelop
2 11 specific property in that portion of an urban renewal
2 12 area designated as a slum or blighted area pursuant to
2 13 chapter 403. The planned activities may include the
2 14 sale and acquisition of property; demolition and
2 15 removal of buildings and improvements; repair and
2 16 rehabilitation of buildings or other improvements; and
2 17 installation, construction, or reconstruction of
2 18 streets and utilities.
2 19 (e) "Significant economic benefits" means the
2 20 creation of new employment opportunities or the
2 21 retention of employment opportunities.>
2 22 #12. Page 4, line 11, by striking the words
2 23 <development or,> and inserting the following:
2 24 <development, or>.

2 25 #13. Page 4, by striking lines 14 through 19 and
2 26 inserting the following:
2 27 <(1) If private property is to be condemned for
2 28 development or creation of a lake, only that number of
2 29 acres justified as necessary for a surface drinking
2 30 water source, and not otherwise acquired, may be
2 31 condemned. In addition, the acquiring agency shall
2 32 conduct a review of prudent and feasible alternatives
2 33 to provision of a drinking water source prior to
2 34 making a determination that such lake development or
2 35 creation is reasonable and necessary. Development or
2 36 creation of a lake as a surface drinking water source
2 37 includes all of the following:
2 38 (a) Construction of the dam, including sites for
2 39 suitable borrow material and the auxiliary spillway.
2 40 (b) The water supply pool.
2 41 (c) The sediment pool.
2 42 (d) The flood control pool.
2 43 (e) The floodwater retarding pool.
2 44 (f) The surrounding area upstream of the dam no
2 45 higher in elevation than the top of the dam's
2 46 elevation.
2 47 (g) The appropriate setback distance required by
2 48 state or federal laws and regulations to protect
2 49 drinking water supply.

2 50 For purposes of this subparagraph (1), "number of
3 1 acres justified as necessary for a surface drinking
3 2 water source" means according to guidelines of the
3 3 United States natural resource conservation service
3 4 and according to analyses of surface drinking water
3 5 capacity needs conducted by one or more registered
3 6 professional engineers.>

3 7 #14. Page 4, by striking lines 20 through 24.

3 8 #15. Page 4, by striking lines 25 through 27.

3 9 #16. Page 5, line 6, by inserting after the word
3 10 <action.> the following: <This subparagraph does not
3 11 apply if both of the following conditions are met:

3 12 (a) The property to be acquired is for an
3 13 improvement to an existing airport, airport system, or
3 14 aviation facilities if such improvement is required by
3 15 federal law, regulation, or order or if such
3 16 improvement is included in an airport layout plan
3 17 approved by the federal aviation administration for
3 18 the existing site of the airport, airport system, or
3 19 aviation facilities.

3 20 (b) The property to be condemned has been zoned by
3 21 a city or county for use as an airport, airport
3 22 system, or aviation facilities.>

3 23 #17. By striking page 5, line 7, through page 7,
3 24 line 13.

3 25 #18. Page 7, by inserting before line 14 the
3 26 following:

3 27 <Sec. _____. NEW SECTION. 6A.23 JUDICIAL REVIEW OF
3 28 EMINENT DOMAIN AUTHORITY.

3 29 1. An owner of property described in an
3 30 application for condemnation may bring an action
3 31 challenging the exercise of eminent domain authority
3 32 or the condemnation proceedings. Such action shall be
3 33 commenced within thirty days after service of notice
3 34 of condemnation pursuant to section 6B.3 by the filing
3 35 of a petition in district court. Service of the
3 36 original notice upon the acquiring agency shall be as
3 37 required in the rules of civil procedure. A property
3 38 owner or a party in possession of the property under a
3 39 recorded lease or contract shall be the only parties
3 40 with standing to bring such action.

3 41 2. An acquiring agency that proposes to acquire
3 42 property by eminent domain may file a petition in
3 43 district court seeking a determination and declaration
3 44 that its finding of public use, public purpose, or
3 45 public improvement necessary to support the taking
3 46 meets the definition of those terms. The action shall
3 47 be commenced by the filing of a petition identifying
3 48 all property owners whose property is proposed to be
3 49 acquired and parties in possession of such property
3 50 under a recorded lease or contract, and including a
4 1 description of the properties proposed to be acquired
4 2 and a statement of the public use, public purpose, or
4 3 public improvement supporting the acquisition of the
4 4 property by eminent domain. The original notice shall
4 5 be served as required by the rules of civil procedure

4 6 on each property owner named in the petition and on
4 7 parties in possession of such property. Such action
4 8 may be commenced by an acquiring agency at any time
4 9 prior to the filing of an application for condemnation
4 10 pursuant to section 6B.3.

4 11 3. For any action brought under this section, the
4 12 burden of proof shall be on the acquiring agency to
4 13 prove by a preponderance of the evidence that the
4 14 finding of public use, public purpose, or public
4 15 improvement meets the definition of those terms. If a
4 16 property owner or party in possession under a recorded
4 17 lease or contract prevails in an action brought under
4 18 this section, the acquiring agency shall be required
4 19 to pay the costs, including reasonable attorney fees,
4 20 of the adverse party.>

4 21 #19. Page 7, line 34, by striking the words <may
4 22 offer> and inserting the following: <may make>.

4 23 #20. Page 8, line 1, by striking the word <twenty=
4 24 five> and inserting the following: <thirty>.

4 25 #21. Page 8, line 11, by inserting after the
4 26 figure <6B.54-> the following: <The option to make an
4 27 alternative purchase offer does not apply when
4 28 property is being acquired for street and highway
4 29 projects undertaken by the state, a county, or a
4 30 city.>

4 31 #22. Page 8, by inserting after line 11 the
4 32 following:

4 33 <Sec. ____ NEW SECTION. 6B.2D NOTICE OF INTENT
4 34 TO APPROVE ACQUISITION OF PROPERTY BY EMINENT DOMAIN.

4 35 1. The acquiring agency shall send notice of a
4 36 proposed resolution, motion, or other document
4 37 authorizing acquisition of property by eminent domain
4 38 to each property owner and party in possession of the
4 39 property under a recorded lease or contract whose
4 40 property is proposed to be acquired by eminent domain
4 41 at least fourteen days prior to the date of the
4 42 meeting at which such proposed authorization will be
4 43 considered for adoption by the acquiring agency. The
4 44 notice shall include the date, time, and place of the
4 45 meeting and a statement that the persons receiving the
4 46 notice have a right to attend the meeting and to voice
4 47 objection to the proposed acquisition of the property.
4 48 The notice shall include a copy of the proposed
4 49 resolution, motion, or other document authorizing
4 50 acquisition by eminent domain.

5 1 2. This section shall not apply to the following:

5 2 a. Street and highway projects undertaken by the
5 3 state, a county, or a city.

5 4 b. Projects undertaken by a municipal utility.

5 5 c. Projects undertaken by a city enterprise
5 6 providing services of sewer systems, storm water
5 7 drainage systems, sewage treatment, solid waste
5 8 collection, or solid waste disposal.

5 9 d. Projects undertaken by a county enterprise
5 10 providing services described in section 331.461,
5 11 subsection 2, paragraphs "b" and "f".>

5 12 #23. By striking page 8, line 22, through page 9,
5 13 line 1.

5 14 #24. Page 9, by striking lines 22 through 25 and
5 15 inserting the following: <is situated as provided in
5 16 section 6A.23.>

5 17 #25. Page 10, by striking lines 17 through 24 and
5 18 inserting the following: <may deliberate in closed
5 19 session. When deliberating in closed session, the

5 20 meeting is closed to all persons who are not
5 21 commissioners except for personnel from the sheriff's
5 22 office if such personnel is requested by the

5 23 commission. After deliberations commence, the
5 24 commission and each commissioner is prohibited from
5 25 communicating with any party to the proceeding, unless
5 26 such communication occurs in the presence of or with
5 27 the consent of the property owner and the other
5 28 parties who appeared before the commission. However,
5 29 if the commission is deliberating in closed session,

5 30 and after deliberations commence the commission
5 31 requires further information from a party or a
5 32 witness, the commission shall notify the property
5 33 owner and the acquiring agency that they are allowed
5 34 to attend the meeting at which such additional
5 35 information shall be provided but only for that period
5 36 of time during which the additional information is

5 37 being provided. The property owner and the acquiring
5 38 agency shall be given a reasonable opportunity to
5 39 attend the meeting. The>.

5 40 #26. Page 11, by inserting before line 4 the
5 41 following:

5 42 <Sec. ____ Section 6B.33, Code 2005, is amended to
5 43 read as follows:

5 44 6B.33 COSTS AND ATTORNEY FEES.

5 45 The ~~applicant~~ acquiring agency shall pay all costs
5 46 of the assessment made by the commissioners and
5 47 reasonable attorney fees and costs, including the
5 48 reasonable cost of one appraisal, incurred by the

5 49 condemnee as determined by the commissioners if the
5 50 award of the commissioners exceeds one hundred ten
6 1 percent of the final offer of the applicant prior to
6 2 condemnation. The condemnee shall submit an
6 3 application for fees and costs prior to adjournment of
6 4 the final meeting of the compensation commission held
6 5 on the matter. The ~~applicant~~ acquiring agency shall
6 6 file with the sheriff an affidavit setting forth the
6 7 most recent offer made to the person whose property is
6 8 sought to be condemned. Members of such commissions
6 9 shall receive a per diem of two hundred dollars and
6 10 actual and necessary expenses incurred in the
6 11 performance of their official duties. The ~~applicant~~
6 12 acquiring agency shall reimburse the county sheriff
6 13 for the per diem and expense amounts paid by the
6 14 sheriff to the members. The ~~applicant~~ acquiring
6 15 agency shall reimburse the owner for the expenses the
6 16 owner incurred for recording fees, penalty costs for
6 17 full or partial prepayment of any preexisting recorded
6 18 mortgage entered into in good faith encumbering the
6 19 property, and for similar expenses incidental to
6 20 conveying the property to the ~~applicant~~ acquiring
6 21 agency. The ~~applicant~~ acquiring agency shall also pay
6 22 all costs occasioned by the appeal, including
6 23 reasonable attorney fees and the reasonable cost
6 24 incurred by the property owner for one appraisal to be

6 25 taxed by the court, unless on the trial thereof the
6 26 same or a lesser amount of damages is awarded than was
6 27 allowed by the tribunal from which the appeal was
6 28 taken.>

6 29 #27. Page 13, line 24, by striking the word
6 30 <offer> and inserting the following: <make>.

6 31 #28. Page 13, line 26, by striking the word
6 32 <twenty=five> and inserting the following: <thirty>.

6 33 #29. Page 14, line 2, by inserting after the word
6 34 <easement.> the following: <The option to make an

6 35 alternative purchase offer does not apply when
6 36 property is being acquired for street and highway
6 37 projects undertaken by the state, a county, or a
6 38 city.>

6 39 #30. Page 15, by striking lines 18 through 20.

6 40 #31. Page 15, line 35, by striking the word
6 41 <twenty=five> and inserting the following: <thirty>.

6 42 #32. Page 16, line 5, by inserting after the word
6 43 <law.> the following: <This subsection does not apply

6 44 when property is being acquired for street and highway
6 45 projects undertaken by the state, a county, or a
6 46 city.>

6 47 #33. Page 16, by striking line 25 and inserting
6 48 the following: <agency from the prior owner plus

6 49 cleanup costs incurred by the acquiring agency,
6 50 whichever is less. However, the current appraised
7 1 value of the real property shall be the purchase price
7 2 to be paid by the previous owner if any other amount
7 3 would result in a loss of federal funding for projects
7 4 funded in whole or in part with federal funds. The

7 5 notice>.

7 6 #34. By striking page 16, line 29, through page
7 7 17, line 18.

7 8 #35. Page 17, by inserting before line 19, the
7 9 following:

7 10 <Sec. ____ Section 6B.57, Code 2005, is amended to
7 11 read as follows:

7 12 6B.57 PROCEDURAL COMPLIANCE.
7 13 If an acquiring agency makes a good faith effort to
7 14 serve, send, or provide the notices or documents
7 15 required under this chapter to the owner and any
7 16 contract purchaser of private property that is or may
7 17 be the subject of condemnation, or to a person in

7 18 possession of such property by recorded lease if
7 19 notices or documents are required to be served, sent,
7 20 or provided to such a person, but fails to provide the
7 21 notice or documents to the owner and any contract
7 22 purchaser, or person in possession if applicable, such
7 23 failure shall not constitute grounds for invalidation
7 24 of the condemnation proceeding if the chief judge of
7 25 the judicial district determines that such failure can
7 26 be corrected by delaying the condemnation proceedings
7 27 to allow compliance with the requirement or such
7 28 failure does not unreasonably prejudice the owner or
7 29 any contract purchaser.>

7 30 #36. Page 17, by inserting before line 19 the
7 31 following:

7 32 <Sec. _____. Section 6B.58, Code 2005, is amended to
7 33 read as follows:

7 34 6B.58 ACQUIRING AGENCY == DEFINITION.

7 35 For purposes of this chapter, an "acquiring agency"
7 36 means the state of Iowa or any person or entity
7 37 conferred the right by statute to condemn private
7 38 property or to otherwise exercise the power of eminent
7 39 domain. In the exercise of eminent domain power, the
7 40 words "applicant" and "condemner" mean acquiring
7 41 agency as defined in this section, unless the context
7 42 clearly requires otherwise.>

7 43 #37. Page 17, by striking lines 20 through 24 and
7 44 inserting the following:

7 45 <Rent shall not be charged to a person in
7 46 possession of the property and shall not accrue
7 47 against the property owner until all or a portion of
7 48 the compensation commission award has been paid to the
7 49 condemnee pursuant to section 6B.25.>

7 50 #38. By striking page 17, line 30, through page
8 1 18, line 2, and inserting the following: <to acquire
8 2 property shall not exercise such authority over
8 3 property located in the unincorporated area of a
8 4 county without first presenting the proposal to
8 5 acquire such property by eminent domain to the board
8 6 of supervisors of each county where the property is
8 7 located and such proposal receives the approval, by
8 8 resolution, of each applicable board of supervisors.
8 9 However, this section does not apply to an entity
8 10 created by or on behalf of one or more political
8 11 subdivisions if the entity is authorized by statute to
8 12 act as a political subdivision and if this section
8 13 would limit the ability of the entity to comply with
8 14 requirements or limitations imposed by the Internal
8 15 Revenue Code to preserve the tax exemption of interest
8 16 payable on bonds or obligations of the entity.>

8 17 #39. Page 18, line 3, by inserting before the word
8 18 <This> the following: <This section does not apply to
8 19 a multistate entity created to provide drinking water
8 20 that has received or is receiving federal funds.>

8 21 #40. Page 18, by striking lines 6 through 16.

8 22 #41. Page 19, by striking lines 4 through 23.

8 23 #42. Page 20, by striking lines 12 and 13, and
8 24 inserting the following: <for the following:>

8 25 #43. Page 20, by inserting after line 20 the
8 26 following:

8 27 <e. The operation of a landfill or other solid
8 28 waste disposal or processing site.>

8 29 #44. Page 20, by inserting after line 20 the
8 30 following:

8 31 <The exceptions provided in paragraphs "a" through
8 32 "c" apply only to the extent the city had this power
8 33 prior to July 1, 2006.>

8 34 #45. By renumbering and correcting internal
8 35 references as necessary.

8 36

8 37

8 38

8 39 COMMITTEE ON JUDICIARY
8 40 KEITH A. KREIMAN, CO=CHAIRPERSON

8 41

8 42

8 43

8 44 DAVID MILLER, CO=CHAIRPERSON

8 45 HF 2351.722 81

8 46 sc/gg/3654

